

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DENNIS LEE GUNTER,

Plaintiff,

v.

DET. SEAN MEEKS, et al.,

Defendants.

Case No. 3:11-cv-00551-MMD-WGC

ORDER

Before the Court are Defendants' Motion to Dismiss for Failure to Prosecute (dkt. no. 55) and Plaintiff's Motion for Summary Judgment ("Plaintiff's Motion") (dkt. no. 56). For the reasons discussed herein, both motions are denied.

The relevant facts are recounted in the Court's September 30, 2013 Order addressing two motions to dismiss. (Dkt. no. 49.) Three counts — three, seven and nine — survived dismissal. (*Id.*) Defendants filed their Answer on October 14, 2013. (Dkt. no. 50.) On August 27, 2014, the Clerk of the Court issued a notice of intent to seek application with the Court to dismiss for want of prosecution pursuant to Local Rule 41-1. (Dkt. no. 52.) Plaintiff sought an extension of time, which was granted. (Dkt. nos. 53, 54.) On the last day of the extended deadline, Defendants moved to dismiss and Plaintiff moved for summary judgment. (Dkt. nos. 55, 56.)

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). In determining whether to dismiss an action for lack of prosecution, or

1 failure to comply with local rules, the court must consider several factors: (1) the public's
2 interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
3 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
4 cases on their merits; and (5) the availability of less drastic alternatives. *Henderson v.*
5 *Duncan*, 779 F.2d 1421, 1423-1424 (9th Cir. 1986) (dismissal for lack of prosecution and
6 failure to comply with local rules).

7 After balancing these factors, the Court finds that dismissal for lack of prosecution
8 is not warranted. Dismissal would run contrary to the public policy favoring disposition of
9 cases on their merits, which Plaintiff's Motion presents. While there is a risk of potential
10 prejudice to Defendants, it appears to the Court that the risk is calculated as Defendants
11 elected to wait for Plaintiff to initiate the early case conference to begin discovery instead
12 of pursuing their own discovery. LR 26-1(d) imposes a duty on counsel for the plaintiff to
13 initiate the Rule 26(f) meeting, but does not bar counsel for the defendant from initiating
14 the meeting. Defendants' counsel could have reached out to Plaintiff, who is proceeding
15 pro se, to schedule the Rule 26(f) conference. Such effort may have alleviated some of
16 the delays in this case.


17 Plaintiff's Motion seeks summary judgment on count three for arrest without
18 probable cause in violation of his Fourth Amendment rights. (Dkt. no. 56.) He essentially
19 argues that he has made a substantial showing that Defendants violated his rights. In
20 response, Defendants sought relief under Rule 56(d), arguing that because Plaintiff has
21 failed to initiate the Rule 26(f) meeting and without discovery, Defendants cannot
22 present facts to oppose Plaintiff's Motion. (Dkt. no. 59.) Under Fed.R.Civ.P. 56(d), if, in
23 response to a summary judgment motion, "a nonmovant shows by affidavit or declaration
24 that, for specified reasons, it cannot present facts essential to justify its opposition," the
25 court may defer consideration of the motion, deny the motion, allow the parties time to
26 complete additional discovery, or grant other appropriate relief. As the Court noted,
27 Defendants could have initiated the Rule 26(f) conference. However, in light of the fact
28 that no discovery has been conducted, the Court is persuaded by Defendants' argument

1 that they cannot adequately oppose summary judgment. Accordingly, the Court will deny
2 Plaintiff's Motion.

3 It is therefore ordered that Defendants' Motion to Dismiss for Failure to Prosecute
4 (dkt. no. 55) is denied. It is further ordered that Plaintiff's Motion for Summary Judgment
5 (dkt. no. 56) is denied. Denial is without prejudice to Plaintiff to later move for summary
6 judgment.

7 The parties are directed to schedule a discovery status conference with the
8 Magistrate Judge within thirty (30) days.

9 DATED THIS 9th day of September 2015.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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